

CA-IR-132

Ref: HECO T-16, page 28, lines 17-20 (Simplified Service Cost Method).

According to Mr. Okada's testimony, "The IRS examination team reviewed HECO's mixed service costs, and they have denied HECO's refund claims related to the SSCM change in accounting method." Please provide copies of the correspondence and other documents associated with this "review" and "denial" and explain HECO's understanding of the potential for resolution of the disputed issues.

HECO Response:

See Attachment 1 for a copy of the relevant portions of the IRS' "30 day letter", which is the taxpayer's notice of its right to appeal adjustments proposed by the IRS examination team. Attachment 1 contains confidential information and is provided subject to Protective Order.

Although the IRS denied essentially all of the refund claims related to the SSCM deduction (see Attachment 1, page 3, column (d) for the total claims disallowed), they agreed with HECO's SSCM calculation in its Notice of Proposed Adjustment (see Attachment 1, pages 5 – 34). On the other hand, the IRS presented alternative positions which questioned the validity of the SSCM deduction.

In addition, the IRS has taken the position that if the SSCM calculation is accepted in whole or in part, and a net operating loss (NOL) is generated, any NOL carry over deduction is not allowed. See Attachment 1, pages 35 – 51.

Based on the foregoing information received, HECO believes the IRS denied the SSCM claims to pass this issue up to their appeals office for final determination and disposition.

On appeal, HECO believes it should prevail on the calculation of the SSCM deduction in 2001, based on the previously settled IRS guidelines. It is not clear whether any benefit from the NOL generated in 2001 will be realized. Note that any deductions allowed in 2001 through 2004 must be recaptured in 2005 and 2006, under the regulations issued by Treasury.

Attachment 1 contains confidential information and will be provided after a Protective Order is issued in this proceeding.

Attachment 1 is voluminous and available for inspection at HECO's Regulatory Affairs Division office, Suite 1301, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii. Please contact Dean Matsuura at 543-4622 to make arrangements to inspect the document. An electronic copy of the requested information is being provided.

CA-IR-146

Provide complete copies of all of the documents prepared for or associated with presentations made to HECO for HEI senior management in 2007 or 2008, to-date, addressing the progress, status, cost or problems with new CIS system.

HECO Response:

Without waiving any of the objections stated below, in response to this information request HECO will provide copies of quality assurance review reports on the CIS Project which were prepared by a third party and submitted to HECO generally on a monthly basis starting in April 2006.¹ Due to the sensitive nature of the information contained in these reports, these reports will be submitted pursuant to the protective order in this docket.

These reports were prepared by a third party - Alliance Data at the outset, which was subsequently acquired by another entity and renamed Vertex. While the company's name changed, the individual conducting the quality assurance review remained the same. The third party drafted the quality assurance review reports and submitted the reports to HECO. As noted in the reports, in some instances, the first draft of the report was subsequently revised based on input received from HECO. HECO shared quality assurance reports with Peace/First Data during meetings with Peace/First Data to discuss the reports. At the end of these meetings, Peace/First Data returned the reports to HECO. The following is a list of the quality assurance reports that are provided as Attachment 1 of this response under the terms of the protective order:

1. April 2006 Quality Assurance Review;
2. May 2006 Quality Assurance Review;
3. July 2006 Quality Assurance Review;
4. August 2006 Quality Assurance Review;

¹ See the Company's CIS Interim Supplemental Report, page 12, filed on May 12, 2006 in Docket No. 04-0268.

5. September 2006 Quality Assurance Review;
6. October 2006 Quality Assurance Review;
7. November 2006 Quality Assurance Review;
8. January 2007 Quality Assurance Review;
9. February 2007 Quality Assurance Review;
10. February 2007 Technical / Development Assessment & QA;
11. March 2007 Quality Assurance Review;
12. April 2007 Quality Assurance Review;
13. May 2007 Technical / Development Assessment & QA;
14. June 2007 Quality Assurance Review;
15. July 2007 Quality Assurance Review;
16. August 2007 Quality Assurance Review;
17. September 2007 Quality Assurance Review;
18. October 2007 Quality Assurance Review;
19. November 2007 Quality Assurance Review;
20. January 2008 Quality Assurance Review;
21. February 2008 Quality Assurance Review;
22. March 2008 Quality Assurance Review;
23. April 2008 Quality Assurance Review;
24. June 2008 Quality Assurance Review;
25. July 2008 Quality Assurance Review;
26. August 2008 Quality Assurance Review;
27. October 2008 Quality Assurance Review.

HECO respectfully objects to providing “all of the documents prepared for or associated with presentations made to HECO for HEI senior management [or “to HECO or HEI Board of Directors”] in 2007 or 2008, to-date, addressing the progress, status, cost or problems with the new CIS system.” Some of that analysis and evaluation is protected by the attorney-client privilege. To the extent the request seeks information that reflects the mental impressions, conclusions, opinions, or legal theories of HECO’s attorneys and HECO, the information requested is also protected from disclosure by the attorney work product doctrine.

HECO also objects to the request, as unduly burdensome, onerous and overly broad to the extent that it requests “complete copies of all of the documents prepared for or associated with presentations made” to the HECO or HEI board of directors or senior management.

HECO further objects to disclosing documents that reveal internal deliberations regarding the progress, status, cost or problems with the new CIS system. Requiring that this information be subject to review by parties in a regulatory proceeding would have a “chilling” effect on the self-analysis process. For example, HECO’s Internal Audit Division conducted an audit in 2008 of the CIS Project, that focused on technical progress and key project risks factors that impact technical delivery, and prepared a report for the HECO Board of Directors Audit Committee, dated August 22, 2008, entitled Technical Progress Evaluation of CIS Implementation. The report addressed the status of the project plan, testing, vendor relationship, and technical quality. Subjecting such sensitive internal deliberations to review in a regulatory proceeding would inhibit robust and candid internal dialogue of this nature in the future.

This information request fails to balance the need for the information against HECO’s need to manage. By analogy, for example, the Federal Freedom of Information Act (“FFIA”), codified at 5 U.S.C. §552, and the Uniform Information Practices Act (Modified), codified at

H.R.S. Ch. 92F, contain broad disclosure requirements based on the public's interest in open government. However, the broad policy in favor of disclosure still allows for exceptions that are intended to permit the efficient and effective functioning of government by protecting the internal deliberative process. *See generally, Pennsylvania Public Utility Commission v. West Penn Power Company*, 73 PA PUC 122 (July 20, 1990), West Law Slip Op ("deliberative process privilege" recognized by the Pennsylvania Public Utility Commission with respect to its own internal staff reports).

HECO would also object to disclosure of such documents even under a protective order. The value of these documents will be diminished if HECO is required to provide the documents, even if the documents were provided pursuant to a protective order.

Attachment 1 contains confidential information and is being provided subject to Protective Order, filed on November 21, 2008.

Attachments 1 is voluminous and available for inspection at HECO's Regulatory Affairs Division office, Suite 1301, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii. Please contact Dean Matsuura at 543-4622 to make arrangements to inspect the document. An electronic copy of the requested information is being provided.